

DEPAOLO-CROSBY REPORTING SERVICES, INC.
197 Delaware Avenue, Buffalo, New York 14202

1 APPEARANCES (CONTINUED):

2 LARSON & LARSON
3 BY: DAVID E. LARSON, ESQ.,
11300 Tomahawk Creek Parkway,
Suite 310
4 Leawood, Kansas 66211
(913) 253-3100
5 Fax: (913) 253-3109
Attorneys for Commercial
6 Carriers, Inc.

7 TAFT, STETTINIUS &
HOLLISTER, LLP
8 BY: CRAIG R. PAULUS, ESQ.,
425 Walnut Street, Suite 1800
9 Cincinnati, Ohio 45202
(513) 357-9633
10 Fax: (513) 381-0205
11 Attorneys for Haynes Supply.

12 ALSO PRESENT: PETER J. TERZIAN, JR.
13 Corporate Representative,
Commercial Carriers, Inc.

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3
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1 The following stipulations were entered into
2 by counsel:

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4 It is hereby stipulated by and between the
5 attorneys for the respective parties hereto
6 that the oath of the Referee is waived, that
7 signing, filing and certification of the
8 transcript are waived and that all objections,
9 except as to the form of the questions, are to
10 be reserved until the time of trial.

11

12

13 M I C H A E L B E V I L A C Q U A
14 4135 Ridgefield Terrace, Hamburg, New York,
15 having been first duly sworn, was examined and
16 testified as follows:

17

18 EXAMINATION BY MR. KOUSTMER:

19 Q. Sir, can you speak up just a little bit
20 because I had a problem hearing you.

21 A. Sure.

22 Q. My name is Tom Koustmer. I'm going to ask you
23 some questions. I represent Mr. Ferguson.

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1 You've been identified as a possible witness
2 under a 26-A disclosure. Can you give me your
3 date of birth?

4 A. It's 12-9-64.

5 Q. And where do you currently work?

6 A. I work for Delavan Industries.

7 Q. And where is that located at?

8 A. 199 Lein Road, West Seneca, New York, 14224.

9 Q. And what do you do there?

10 A. I'm the vice-president, general manager.

11 Q. And how long have you worked there?

12 A. Since '97.

13 Q. And have you always been the vice-president,
14 general manager?

15 A. I was vice-president of operations and then
16 recently promoted to vice-president, general
17 manager.

18 Q. Prior to 1997 where did you work?

19 A. I worked for Commercial Carriers.

20 Q. And where were they located at the time?

21 A. They were located at 199 Lein Road, West
22 Seneca.

23 Q. And how long did you work there?

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1 A. Since 1985.

2 Q. Starting in 1985 what job did you have there?

3 A. In 1985 I started off as a job cost clerk. Do
4 you want to go through the whole progression?

5 Q. Yes, go ahead.

6 A. I started off as job cost clerk and then
7 promoted into purchasing agent and parts
8 sales. Then from there I went into straight
9 purchasing and then from purchasing I went
10 into engineering manager for Delavan
11 Industries.

12 Q. And when did you become engineering manager at
13 Delavan?

14 A. In 1994.

15 Q. So in 1994 you were working for Commercial
16 Carriers, Inc.?

17 A. Yes, that's correct.

18 Q. Were they owned by Delavan at that time?

19 A. No. They were owned by Ryder Systems.

20 Q. So in 1994 through 1997 they were owned by
21 Ryder Systems?

22 A. That's correct.

23 Q. And what is your educational background, sir?

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1 A. I have a BS in business administration with a
2 major in finance and management information
3 systems.

4 Q. And where did you get your BS from?

5 A. University of Buffalo.

6 Q. Do you have any training in engineering?

7 A. No.

8 Q. Directing your attention back to 1994, do you
9 remember a decision made by someone to put
10 safety cables up on the head ramps of these
11 trailers?

12 A. Yes.

13 Q. And Commercial Carrier was manufacturing these
14 trailers at the time, correct?

15 A. Yes.

16 Q. And who made that decision?

17 A. Vince Fortuna.

18 Q. And Mr. Fortuna, what was his position at the
19 time?

20 A. I believe he was the senior vice-president of
21 maintenance.

22 Q. And when did he decide to do that?

23 A. The exact date was -- I think it was -- I want

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1 to say May, June, July in '94.

2 Q. So how did you find out about that decision?

3 A. Well, what we had been doing was when Vince
4 Fortuna came in we had put a series of
5 pictures together showing all the various
6 models that we moved in the past for various
7 customers and going through the pictures with
8 Vince he had noticed the cables on a couple of
9 customers' equipment that we had manufactured
10 and these particular ones, one was a foreign.

11 It was a Belgium unit that we manufactured
12 and the other was a Japanese unit that we had
13 manufactured and he had noticed the cables on
14 the equipment and asked what the cables were
15 on there for and we basically explained it was
16 a customer spec and they used them in this
17 area for safety cables and he had asked us
18 that he'd like to try those on the equipment
19 and that's when we decided to try those on the
20 equipment.

21 Q. My understanding from Mr. Terzian's deposition
22 is that approximately 861 trucks had those
23 placed on them after that decision was made.

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1 Is that your understanding?

2 A. Yes.

3 Q. So everything that was made after Mr. Fortuna
4 made the decision to try the cables,
5 everything you all manufactured had these
6 cables on it, correct?

7 A. Yes.

8 Q. That was up through 1997, correct?

9 A. Yes.

10 Q. Now, where did you get the cables from?

11 A. Cables we got from Hanes Supply.

12 Q. Did you buy cables from anyone else other than
13 Hanes Supply?

14 A. No.

15 Q. So during this period of time from June, July
16 '94 up to when CCI went out of business or was
17 bought out, whatever, everything was
18 purchased, all the cables were purchased from
19 Hanes Supply, is that correct?

20 A. Yes.

21 Q. Now, after the decision was made -- how is it
22 that you chose the particular type of cable
23 you put on there?

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1 A. Well, what we did is, and I exclusively was
2 involved with this, I had asked Hanes Supply
3 to come in to look at this application and in
4 doing that what we had did is we had ordered
5 some cables from Hanes Supply. We got in and
6 we had an idea of how to do it looking at some
7 of these other customers that we had put the
8 cables on which was using a threaded eyebolt
9 and a thimble and a cable with cable clamps
10 and we had put one together in the engineering
11 department and then I asked Bill Hanes to come
12 in because I wanted him to see the
13 application.

14 I specifically asked for an engineer
15 because I didn't want just a sales guy. We
16 needed somebody to come in and basically fit
17 these cables to our application, so what we
18 did is we put that set together. We brought
19 Bill Hanes in, showed Bill the application,
20 where we want to use these cables and Bill
21 basically came in, Bill recommended to us the
22 type of cable to use as well as the type of
23 end to use with the cables, so basically he

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1 fit the cables to our application which is
2 very normal in our industry. We do the same
3 thing with hydraulic cylinders and valves. We
4 basically bring the vendor in who is the
5 expert, knows what the capabilities are.

6 We show them the application and once
7 we show them the application then they
8 basically design the part or the system or the
9 component part to go in that application. We
10 do that with our hydraulic cylinders, we do
11 that with our hydraulic valves. We do that
12 with our axles and basically all we do is tell
13 the vendor we want it this long or this short
14 and they come in and they have done all the
15 technical research as far as will it handle
16 this certain pressure, will it handle this
17 much force, what is the strength and then we
18 put that product on the unit and then we'll
19 test that unit going down the road actually in
20 actual day to day application.

21 Q. In this case, and we'll go through this, but
22 in this case they were put on all the trucks.
23 They weren't just put on a couple of trucks

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1 and then you tested those trucks is my
2 understanding.
3 A. We put them on the truck as a test.
4 Q. You did?
5 A. Yes.
6 Q. How long did the test last or what do you mean
7 you tested it? What did you do?
8 A. Well, originally Vince Fortuna wanted to put
9 them on to test them and we put them on the
10 units and we were running just a day-to-day
11 test with the equipment.
12 Q. But you put them on every unit you
13 manufactured after you did the first one,
14 right?
15 A. Yes.
16 Q. What I'm getting at, you didn't put on one
17 truck and then test that for a while and
18 decide to put them on all the trucks. Once
19 you decided to use the cables you started
20 manufacturing the -- I mean, you started
21 manufacturing your trailers with the cables,
22 correct?
23 A. Yes.

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1 Q. Now, you said you showed Bill Hanes the
2 application. What is it that you showed him
3 exactly?

4 A. Basically took him out to a car carrier. We
5 showed him where we have our cable post that
6 we want to put up on to the equipment, showed
7 him that in this application there is a car
8 that's going to go over the top of this head
9 rack, showed him that a driver would be up on
10 top of that head rack and that he would be
11 using these cables as a safety device.

12 Q. So can you look at Exhibit Number A, if they
13 can hand you that?

14 A. Yes.

15 Q. And that's a truck in question here and it
16 shows the cable that's broken, but just for
17 illustrative purposes, what you showed Bill
18 Hanes was that -- did you have the posts up
19 when you went out and talked to him or did you
20 show him where the posts were going to be?

21 A. We showed him where the posts were going to be
22 on the unit.

23 Q. So you hadn't constructed the post?

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1 A. No. The particular unit we showed him didn't
2 have the posts on it. On drawings -- on a
3 paper drawing we had the actual posts on it.

4 Q. You gave him a paper drawing?

5 A. Showed him a paper drawing and then physically
6 went out and looked at an actual unit and
7 showed them where they would be needed in the
8 application.

9 Q. And did you have already cables with the
10 threads on them that you showed him or what?

11 A. We basically had cables with eyebolts and
12 using thimbles with cable clamps because
13 that's the technology we've seen on prior
14 units that we manufactured, one being Moan and
15 another being Homanna.

16 Q. But it's my understanding that that wasn't
17 what was used, correct, the eyebolt?

18 A. The eyebolt is what we originally -- eyebolts
19 is what we originally laid out. Before we
20 brought Bill Hanes in we had eyebolts,
21 thimbles and cable clamps.

22 Q. And what did you go with?

23 A. We went with what Bill Hanes recommended which

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1 was swedged on ends with galvanized cable.
2 The ones we showed Bill were never put on a
3 unit. We were just trying to lay out what we
4 felt -- none of our engineers were experts at
5 all in cables. Nobody -- when you talk
6 cables, everything was Hanes Supply. They're
7 the expert in the area. Any cable that we
8 would ever look at, whether it's for lifting
9 with cranes or in an application on our
10 manufacturing equipment, Hanes Supply is where
11 you go. We went to Hanes Supply for their
12 expertise on cables.

13 Q. Did you know Bill Hanes was an engineer?

14 A. Yes, I did. Because I was dealing -- because
15 I came from the purchasing side, I was dealing
16 with their sales guy and I believe their sales
17 guy -- at the time I think it was Gary. I
18 remember the gentleman had a heart attack. I
19 think it was Gary at the time and I
20 specifically asked for an engineer to come in
21 to fit this application just like we would do
22 with any other part component part that we put
23 on our equipment like our valves, our

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1 cylinders.

2 We make the cylinder clips to hold the
3 cylinder, but the vendor comes in and the
4 vendor basically fits to our application.

5 Q. How many times did you meet with Mr. Hanes?

6 A. We probably met, I would say, at least two to
7 three times.

8 Q. Anyone else at these meetings other than you
9 and Mr. Hanes?

10 A. Most of the time it was me and Bill.

11 Q. Do you remember anyone else that might have
12 been there?

13 A. Nobody else from Hanes Supply.

14 Q. Do you remember anyone that might have been
15 there from CCI?

16 A. No, not in that meeting. It really would have
17 been me at that time.

18 Q. And in what meeting was it that Mr. Hanes told
19 you to go with the swedged end with galvanized
20 cable?

21 A. One of the meetings we had. I can't tell you
22 specifically if it was the first, the second.
23 Once we brought them in and showed them the

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1 application, he came back with the swedged end
2 and told us that the swedged end, once they're
3 swedged on the cable are actually stronger
4 than the cable.

5 Q. Who decided on the coating to use on the
6 cable?

7 A. Again, that was Bill. I mean, I remember
8 there was nothing specific that we really
9 looked at various coatings or where he
10 recommended to us that this coating is better
11 than another coating.

12 Q. Did you have any discussion between a vinyl
13 coating and a nylon coating?

14 A. No, not at all.

15 Q. You don't remember any discussions?

16 A. No, we didn't.

17 Q. You didn't have them?

18 A. Did not.

19 Q. Whose decision was it to paint the coating
20 yellow?

21 A. That was our decision to do that.

22 Q. Did they first come clear?

23 A. Yes.

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1 Q. When did you decide to paint them yellow?
2 A. That was a decision again by Vince Fortuna.
3 He wanted them to match the rig.
4 Q. So were they coming from Hanes Supply yellow?
5 A. Yes.
6 Q. Okay. Do you remember when it was decided to
7 make them yellow from the beginning or was it
8 after a while or what?
9 A. No. I don't believe it was from the
10 beginning. It was just -- I can't tell you a
11 specific cutoff date of when we changed them
12 to yellow, but it had nothing to do with
13 whether the coating was nylon or PVC or
14 whatever else it's made of. It was strictly
15 to match the unit.
16 Q. If you can look through those documents that
17 might be in front of you, the exhibits?
18 A. Sure.
19 Q. Look through there and find Q.
20 A. Yes.
21 Q. Do you see those?
22 A. Yes.
23 Q. Starting with Plaintiff's Exhibit P, you said

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1 you gave him some drawings. Are these the
2 drawings that you gave him?

3 A. I didn't give him drawings. I showed him some
4 drawings.

5 Q. Where had those drawings come from?

6 A. Those drawings came from Delavan Industries or
7 Commercial Carriers, I should say.

8 Q. And is Exhibit P or Exhibit Q the drawings or
9 were they different?

10 A. Similar. This is the snapshot of a drawing.
11 This is actually a larger drawing. It's an
12 assembly drawing just showing the cables
13 application.

14 Q. Okay. So when he first came, before he made a
15 recommendation or picked up the product, you
16 were showing him some drawings, is that
17 correct?

18 A. Yes.

19 Q. And they were done by whom?

20 A. I can't tell you specifically. It would have
21 been -- the drawings would have been done by
22 one of my draftsmen or a cad operator.

23 Q. At Commercial Carriers?

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1 A. At Commercial Carriers.

2 Q. Okay.

3 A. The drawings that I'm looking at right now,
4 this one shows the swedged end. At that time
5 we wouldn't have been showing them with any
6 swedged end.

7 Q. Okay.

8 A. We would have just had just the posts showing.
9 This is the area and the head rack to show
10 that the height, how high up these cables
11 would be put on and showing them an actual
12 load of cars. We have cars on there to show
13 them what we got to deal with as far as
14 driving a car onto the head rack.

15 Q. So you didn't show the swedged end?

16 A. We couldn't show them the swedged end. There
17 wasn't one engineer who was familiar with any
18 type of swedged end. The only thing we've
19 ever seen on older equipment that we
20 manufactured, which was more of a customer
21 spec, was the eyebolts with thimbles and cable
22 clamps.

23 Q. Is that the one you were referring to in

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1 Belgium?

2 A. Yes.

3 Q. That was done with eyebolts?

4 A. It was done with thimbles, cable and cable
5 clamps and it may not have been an eyebolt.

6 It may have been a solid hook. By solid hook,
7 it would have been like an eyebolt welded onto
8 the piece of equipment. It was just a loop
9 that was welded on.

10 Q. How many engineers were on staff there at
11 Commercial Carriers, Inc. at this time?

12 A. Not counting my cad operators because they
13 were not engineers, I believe that we had four
14 engineers.

15 Q. Okay. When was it in '97 that Commercial
16 Carriers, Inc. stopped and you went to your
17 new job at Delavan?

18 A. I said '97 to you, but the new job I started
19 was actually March of 1998. Commercial
20 Carriers ceased in September of '97.

21 Q. Up to September of '97 was there any
22 replacements done for cables that had been put
23 on these trucks?

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1 A. No.

2 Q. So up to September of '97 it's all original
3 equipment on the trucks that are leaving
4 Commercial Carriers, Inc., correct?

5 A. Yes.

6 Q. And during the period of beginning 19 -- end
7 of '94 and beginning 1995 up to 4/25/95, any
8 cables would have been bought from Hanes
9 Supply that were put on the truck, is that
10 correct?

11 A. Yes.

12 Q. In fact, during the whole time Hanes Supply is
13 the only supplier, correct?

14 A. Yes.

15 Q. When you talked with Bill Hanes did he give
16 you any options of different types of material
17 to use in the cable?

18 A. No.

19 Q. Did he tell you that you could use a stainless
20 steel cable?

21 A. No.

22 Q. He didn't say you have to make a decision
23 between stainless steel and galvanized?

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1 A. No.

2 Q. Did he give you any options as it related to
3 how thick the steel was? I think the ones
4 that are used was a quarter inch, right?

5 A. The ones that were used were yes, quarter inch
6 cable. With the coating I think it came up to
7 about 5/16th's.

8 Q. And they're how long?

9 A. It varies by model.

10 Q. Okay.

11 A. I mean, that's the color and the length is
12 what we basically spec. Everything else is
13 fit by Hanes Supply for the application, the
14 component part, just like it would be with any
15 other component part that we put on our
16 equipment. The cylinders, valves, axles.

17 Q. Did Mr. Hanes give you any material as it
18 related to maintenance of the cables?

19 A. No.

20 Q. Did he tell you anything about maintenance of
21 the cables?

22 A. No.

23 Q. Did you pass on to Allied anything concerning

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1 maintenance of the cables?

2 A. Did I pass on to Allied?

3 Q. Yes, Commercial Carriers, Inc. Did they pass
4 on to Allied anything about maintenance to the
5 cables?

6 A. Did Hanes Supply or did Delavan?

7 Q. Did Delavan, what you referred to as --

8 A. Commercial Carriers, no, because no one had
9 told us. If one of our vendors would come to
10 us and say I'll take the cylinders, for
11 instance, had told us every three months you
12 have to grease the rods, then we would pass
13 that on, but we were never told by Hanes
14 Supply to do any type of maintenance on the
15 cable.

16 In fact, we joked about the thickness
17 of this cable because it had a 10 to 15 times
18 the strength that was required and the size of
19 the cable was just so that if someone was
20 grabbing with their hand the cable was large
21 enough that they could get a good grip on the
22 cable for safety.

23 Q. The cables were made for safety, correct, for

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1 someone to grab in case they started to fall?

2 A. Yes.

3 Q. Were any warnings given to you by Hanes Supply
4 concerning the cables?

5 A. No.

6 Q. Did you tell Bill Hanes how long you guys
7 expected these cables to last?

8 A. Basically what we were doing at the time was
9 we were building equipment with million mile
10 equipment and when we put anything on the
11 equipment it was to last the life of the
12 equipment.

13 Q. Correct, okay. Life of the equipment is what
14 you would say is a million miles?

15 MR. PAULUS: I don't think he was finished
16 with his answer.

17 Q. I'm sorry.

18 A. Specifically, I mean, if you're asking did we
19 tell them it needed to last five, ten years,
20 fifteen years, no. It was to last the life of
21 the equipment.

22 Q. Did you tell him how long the life of the
23 equipment was?

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1 A. Basically just tell them we ran a million
2 miles on the trucks and everything was to
3 extend the life of the truck to make sure it
4 reaches a million miles. We never
5 specifically said you know, years, two years,
6 three years, ten years, fifteen. We never got
7 into that specifically.

8 Q. Okay, but when you told him that it was
9 supposed to last the life of the truck which
10 was a million mile truck, how would he know
11 how long it takes to put a million miles on a
12 portable parking lot or a car carrier?

13 A. I don't know how he would know that.

14 Q. But you never told him any duration that you
15 wanted them to last?

16 A. No, just to last the life of the equipment.

17 Q. But you never told him what the life of the
18 equipment was?

19 A. Not specifically.

20 Q. Did you ever test any other types of cables or
21 is this the only one that you -- one that you
22 used?

23 A. This is the only one we used.

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1 Q. If you look in Plaintiff's Exhibit R and S, it
2 looks like order forms from Hanes Supply,
3 purchase order forms and there is also
4 invoices in there.

5 MR. PAULUS: If I can interrupt you, our
6 copy of Exhibit R does not show the date. It
7 says 12/7 and then the year is cut off.

8 Q. Unfortunately, so does mine. Let me look at
9 another one I have here, the original.

10 MR. PAULUS: It does say the order date in
11 a different place down in the body of it.

12 Q. Okay. That must have been how I got it from
13 whoever sent it to me. I think that might
14 have been Mr. Winter. Anyway, if you look in
15 R and S, those are the cables that -- just
16 look at R. This is the cable that you used
17 during that period of time, correct?

18 A. Yes.

19 Q. Going back to Mr. Hanes, you had these two or
20 three meetings and it's your testimony that he
21 was the one that picked out the material, the
22 galvanized steel, right?

23 A. Yes.

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1 Q. And he's the one that picked out the coating,
2 the PVC, correct?

3 A. Yes.

4 Q. You picked out the color?

5 A. And the length.

6 Q. Yellow. He's the one that picked out the
7 swedged design, not an eyebolt design?

8 A. Yes.

9 Q. And then you put them on starting when? You
10 said you met with him sometime in '94. When
11 did you start?

12 A. It was in '94. I can't pinpoint the exact
13 date. June, May.

14 Q. June or May of '94?

15 A. Yes.

16 Q. And from that date on until '97, whatever was
17 built was provided with Hanes Supply cables
18 which were the swedged on quarter inch
19 galvanized steel cables, correct?

20 A. Yes.

21 Q. The testing that you referred to before was to
22 put the cables on the truck and just run them,
23 correct?

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1 A. Yes.

2 Q. Okay. So no special testing was done, is that
3 correct?

4 MR. LARSON: Object to the form. You mean
5 other than that?

6 Q. Other than what he said, put them on the
7 trucks and run the trucks. That was the test
8 that was done?

9 A. The only other testing would be in the testing
10 that Hanes Supply did on the cables.

11 Q. That's fine. Did you request from Hanes
12 Supply any special testing that they do?

13 A. I did not because he had fit it to the
14 application.

15 Q. Just a yes or no. You didn't request any
16 testing, correct?

17 A. No.

18 MR. LARSON: You might want to rephrase
19 it, Tom.

20 Q. Did you request any type of testing from Hanes
21 Supply?

22 A. Originally when he came in, when he fit it to
23 the application, he showed us the actual --

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1 what the cable was capable of doing as far as
2 he had all his testing done on this cable and
3 said with the swedged end with this size cable
4 it can do approximately -- I think it was 7000
5 to 8000 pounds as far as the strength of the
6 cable, so the testing Hanes had done already
7 and brought the test results into us.

8 Q. You didn't request any test yourself?

9 A. No other testing that we requested other than
10 the original specifications from his testing
11 on the first set of cables that he brought in
12 to us.

13 Q. Okay. So after the first meeting it's safe to
14 say that he came back with a set of cables to
15 use?

16 A. I don't know if he physically brought a set of
17 cables, but he came back with the technical
18 information.

19 Q. Okay, and at that point did you ask him to do
20 any other tests than what he told you the
21 cables could do?

22 A. No, we did not.

23 Q. Did you ask him anything about corrosion or

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1 rust as it related to the cable?

2 A. Not specifically.

3 Q. Did you ask for any tests for corrosion or
4 rust as it related to the cable?

5 A. No.

6 Q. Did Mr. Hanes or Hanes Supply tell you
7 anything about inspecting the cables, to
8 inspect them or anything like that or
9 instructions on how to inspect them?

10 A. No.

11 Q. So nothing was said about inspections?

12 A. No.

13 Q. Wait a minute. Was anything said about
14 inspections?

15 A. No.

16 Q. And it's my understanding up to the time that
17 Commercial Carriers, Inc. closed in the fall
18 of -- or you said September of '97, right?

19 A. Yes.

20 Q. There's no report of any cable breaking, is
21 that correct?

22 A. That's correct.

23 Q. You would have known if a cable broke, would

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PAULUS - BEVIL CQUA - 3/26/03

1 you not?

2 A. Yes, I would have.

3 Q. So there is no replacement cables being used
4 in the system up to September of '97?

5 MR. PAULUS: Object to the form.

6 Q. Was there any replacement cables that you know
7 of being used in the system up to September of
8 '97?

9 A. Not that I'm aware of, no.

10 MR. KOUSTMER: I think that's all I have.
11 I'm sure Mr. Paulus might have some questions
12 for you.

13

14 EXAMINATION BY MR. PAULUS:

15 Q. I do. I'm Craig Paulus and I work for Hanes
16 Supply. Before I forget to ask this, Mr.
17 Dziadaszek told us that there were some Hanes
18 Supply books sitting on the shelf. Do you
19 recall if they were these little books that's
20 called rigger's handbooks or if they were
21 catalogues like these big books? Do you
22 remember those?

23 A. Sitting on our shelves?

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1 Q. At CCI in the time period we're talking about?

2 A. Not the little books, but the Hanes Supply
3 catalog, yes.

4 Q. Okay, and did Bill, when he met with you, Bill
5 Hanes, did he bring anything like this, like a
6 catalog or rigger's handbook?

7 A. He brought technical data with him. I don't
8 know specifically what book it was, but he did
9 bring all the technical data with him.

10 Q. Do you remember if they were mill test
11 certificates that showed the breaking
12 strength?

13 A. They had strengths in them so you could see
14 what the strengths of the cables were.

15 Q. Okay. Was it like a chart that showed the
16 strengths?

17 A. Yes, the various size cables and what the
18 strengths were.

19 Q. Do you remember the -- exactly the month in
20 1994 when you -- I believe you left purchasing
21 and you went into the engineering department
22 at CCI?

23 A. Oh boy. It was mid-year. I can't tell you

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1 the exact date. It definitely was '94. It
2 was -- I want to say May, June '94. I might
3 be missing --

4 Q. When you changed into the engineering
5 department from purchasing did you keep doing
6 any purchasing for the purchasing department?

7 A. Well, I was well versed in dealing with all
8 the vendors and in dealing with the vendors we
9 would bring the vendor in to fit various
10 components for application, so I would bring
11 the vendors in when I was in purchasing and
12 they would meet with someone from the
13 engineering staff and we would go over what
14 the parameters were for the application and
15 then the vendor would fit their product for
16 the application.

17 Q. Now, the engineering department, were you
18 located at the Walden Avenue address?

19 A. Yes.

20 Q. And when these cables -- you started ordering
21 them and I say you. Let me rephrase that.
22 When CCI began ordering cables in bulk to be
23 installed on all the trucks were they

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1 installed at the Lein Road facility of Murray
2 Recon?

3 A. Yes, but could some be installed at the Walden
4 Avenue? Very few, but you would have had some
5 done there.

6 Q. But the engineering department was at Walden,
7 most of them were installed at Murray Recon
8 and when CCI placed an order for cables from
9 CCI to be installed on the trucks would you
10 have Hanes ship them straight to Murray Recon
11 not on Lein Road?

12 A. It could have went to both places, but I would
13 say the majority would be in lots based on
14 volume. We would set up blanket orders and
15 have releases and the majority of them would
16 go to Lein Road, but you may have some that
17 could have shipped to Walden Avenue, but I
18 would say the majority would go to Lein Road.

19 Q. I'm going to show you some exhibits that I
20 have marked Bevilacqua A through G. I have
21 sent these to all the attorneys in this case
22 in preparation for today and I'll represent I
23 think there's one page, maybe two that I

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1 hadn't previously disclosed which I described
2 in a letter and that can supplement my
3 discovery responses.

4 I want to direct your attention to that
5 first exhibit, Exhibit A. You might not
6 recognize this document, but I want you to
7 focus on the description of the product there.
8 It's a one end G-414 thimble. Other end with
9 3/8th's by 6 inch G and EG-277 turnbuckle
10 measure, etcetera, etcetera. This is an order
11 in 1993. Does this -- and if you look at the
12 next couple of pages you'll see they describe
13 different lengths of this 3/8th inch cable and
14 the second page describes it as 3/8th's inch
15 coated yellow galvanized aircraft cable. Does
16 that sound like it's either for the Japanese
17 or Belgium units, one of those two units?

18 A. I can't tell you specifically from just
19 looking at this whether it's for that unit or
20 not.

21 Q. Was this placed at a time you were in
22 purchasing?

23 A. Yes, but I didn't do -- there was four

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1 purchasing agents.

2 Q. If you look at Exhibit B, this is an order or
3 the invoice was sent on 7/11/1994. That's for
4 3/16th stainless steel cable, nylon coated.
5 Do you remember when that was placed or do you
6 remember what the application was for that
7 cable?

8 A. It was a 3/16th cable and it was stainless
9 steel.

10 Q. And if you notice on the first page, it
11 describes it as 44 and a half inches for two
12 units. The second page 64 and a half inches
13 and the third page 68 and a half inches and
14 then the next page 81 and a half inches.
15 These had snaps on each end. Do you remember
16 what these cables were for?

17 A. I do not. Just from looking at this date I
18 cannot place what it was exactly for. I know
19 originally we had a 3/16th cable that came in
20 that when we did the eyebolts and the thimbles
21 with the cable clamps it was a thinner cable.
22 It was not as thick as the cable that we use
23 with Commercial Carriers that physically went

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1 on the trucks. We used that when we first did
2 the first layout to show what we were looking
3 for, just kind of copying off what other
4 customers did with the cable clamps and that.
5 Prior to bringing Bill in we did start with
6 the thinner cable but it never made its way on
7 the truck.

8 Q. Right, and that was based on feel. You could
9 get a better grip on a quarter inch cable than
10 a smaller cable?

11 A. Yes. With the coating it brought it up to
12 5/16th, so you could get a better grip, yes.

13 Q. I want to direct your attention to Exhibit
14 Bevilacqua C. The first page of this exhibit
15 you'll notice it says it's ordered by Mike B.
16 Is that you?

17 A. I would say yes.

18 Q. And this is in October of 1994. At that time
19 you were in engineering, right?

20 A. Yes.

21 Q. This is -- the inside salesperson indicates
22 WCH, William C. Hanes?

23 A. Yes.

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1 Q. And do you think this is maybe the first four
2 quarter inch cables that he made for you to
3 take a look at?

4 A. I would say yes, but this date, there could
5 have been -- I'm guessing at the date, but
6 this is the cable.

7 Q. It's the right time period, roughly?

8 A. Yes, but it doesn't tell you what ends are on
9 the cable.

10 Q. If you look at the third page, there's a
11 description quarter inch by 118 -- quarter
12 inch by 128 inch TS to TS. That's threaded
13 stud to threaded stud, wire rope assembly
14 coated to 5/16th. Does that match the
15 description of the cables that you looked at?

16 A. Yes.

17 Q. This doesn't describe --

18 A. That matches the description of the cables
19 that Bill Hanes brought in to us.

20 Q. Okay, and if you look at Exhibit Bevilacqua D,
21 that looks like it's the invoice for those
22 four pieces that we just looked at and that
23 are described in Exhibit E?

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1 A. Looks like a packing slip.

2 Q. Yes. That the same quarter inch by 128 inch
3 length, wire rope assembly?

4 A. Yes.

5 Q. And you call this a packing slip. Is this
6 something that would come in when the cables
7 came in?

8 A. The packing slip comes when you have goods and
9 merchandise come in, a packing slip comes with
10 it.

11 Q. Okay.

12 A. But this would be something that I would never
13 see.

14 Q. All right, but based on when you worked in
15 purchasing, packing slips came in to
16 purchasing, right?

17 A. Yes. No packing slips came in to our accounts
18 payable.

19 Q. Okay. Now, looking at Exhibit Bevilacqua E,
20 this is another order that you placed at
21 roughly the same time, October. It looks like
22 it was shipped on October 4th, 1994 and if you
23 look at the second page they're described as

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1 eighth inch coated cables. Those are the
2 cables that you decided were too small, you
3 couldn't get a good handhold on?

4 A. Yes, the 3/16th's. That's with the coating.
5 That's the size with the coating on it would
6 be 3/16th's.

7 Q. Is that what you assessed and thought this
8 doesn't have the good feel that if you're
9 trying to grab hold of it as a safety cable?

10 A. Yes.

11 Q. And Exhibit Bevilacqua F looks like it's a
12 purchase order for those eighth inch safety
13 cables and they're described as safety cables,
14 is that correct?

15 A. Yes.

16 Q. Would you see these purchase orders for safety
17 cables? You said you wouldn't see a packing
18 slip.

19 A. I wouldn't see the purchase order either.

20 Q. But you ordered the ones that are described in
21 Exhibit E?

22 A. Right. I would verbally place -- and in this
23 particular case I verbally made the call,

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1 but then as the purchase order would be
2 formalized by the purchasing department.

3 Q. And the same on Exhibit C. You ordered those
4 four units that were quarter inch, Exhibit C.

5 A. Yes.

6 Q. Exhibit C, those quarter inch cables, there
7 are four of them that you ordered and they
8 were shipped to you on 10/5/1994?

9 A. Yes.

10 Q. You got four cables?

11 A. Yes.

12 Q. I want you to look at Exhibit Bevilacqua G.
13 Is this another packing slip?

14 A. That's an invoice.

15 Q. Okay. This says it's ordered by Mike Parker.
16 Is that someone who worked in engineering or
17 purchasing?

18 A. Mike Parker was -- he worked in engineering.

19 Q. And the description of the work here is to
20 rework the quarter inch -- the description of
21 the work is to rework the quarter inch by 128
22 inch wire rope to a 125 inches with a new
23 stud. Is that correct?

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1 A. That's what it says, yes.

2 Q. Do you remember when this happened in October
3 were you involved in that?

4 A. Yes.

5 Q. Was Mike Parker involved in the development of
6 these cables?

7 A. No. Mike Parker was a draftsman or a cad
8 operator. He would basically detail to come
9 up with the final lengths that fit between the
10 cable posts.

11 Q. So it was CCI that decided you wanted them
12 shortened from 128 to 125?

13 A. Yes.

14 Q. When I look at this the number is 26. There
15 are 26 pieces, right?

16 A. Yes.

17 Q. That needed to be reworked?

18 A. Yes.

19 Q. If I look at Exhibit C, Hanes had only shipped
20 you four quarter inch cables. Where did the
21 other 22 come from?

22 MR. LARSON: I'll object to that because
23 we're not sure we have all of the documents

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1 that show all of the shipments, at least
2 before the witness. So I don't know how he
3 could answer that question, but --

4 MR. KOUSTMER: I just said I'll join in
5 the objection.

6 Q. Do you have any idea, assuming that I'm
7 representing to you all the orders for quarter
8 inch cables that were up until this point of
9 Exhibit G, where these other 22 cables could
10 have come from?

11 MR. LARSON: Same objection.

12 MR. KOUSTMER: Same objection.

13 A. We only purchased cables from Hanes Supply.
14 There is nowhere else that we ever purchased
15 cables that I'm aware of.

16 Q. Did you direct Mike Parker to contact Hanes
17 Supply to request that cables be reworked and
18 shortened?

19 A. Yes.

20 Q. Were they shortened to reduce the amount of
21 sway?

22 A. No. They were shortened -- when you drive a
23 car on the head rack you either back in or

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1 drive it in and you have to just accommodate
2 where the ladders are for the guy to climb up
3 the side of the head rack, so sometimes you
4 have to shorten it to make sure you have
5 proper door openings for the car or lengthen
6 it to make sure the guy climbing the side of
7 the unit, there's a substantial opening, so he
8 can get in on to the top of the head rack.

9 Q. So you would want to lengthen it so it's
10 easier to get out of the cargo unit doors,
11 right?

12 A. It's for positioning of the vehicle. You
13 would position the cables so it would be the
14 best for the driver to get up and down the
15 vehicle itself and also to open and close the
16 vehicle that was on there to get in and out of
17 the car also.

18 Q. So CCI decided how long the cable should be
19 and how much --

20 A. No. CCI decided how long the cables should be
21 and what color the cables should be. Bill
22 Hanes decided what cable should be used in
23 this particular application's fit based on us

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1 showing him the application, just like every
2 other vendor does for us, cylinders, valves.
3 We build valve stands, cylinder stands and
4 then the vendor fits the application.

5 Q. Okay. What I'm getting at, CCI chose the
6 length, right?

7 A. Yes.

8 Q. How did you decide how high to make the posts?

9 A. As far as how high to make the posts, that
10 would have been decided by our engineering
11 department which would have been, I believe at
12 the time, would have been Dave Phillips.

13 There's a minimum requirement that you can't
14 exceed 13'6" because of the bridges.

15 Q. Bridges and clearance?

16 A. Right.

17 MR. PAULUS: I think that's all I have.

18

19 EXAMINATION BY MR. LARSON:

20 Q. I have a few questions. First off, with
21 respect to Bevilacqua Exhibit F, there's a
22 reference to safety cables that are 1/8th
23 inch to 3/16th's. Do you know what, if any,

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1 application these cables would have been put
2 to?

3 A. That size cable never made its way on one of
4 the rigs. It was a cable that we brought in.
5 Originally we were looking at using thimbles,
6 eyebolts and cable clamps and we brought that
7 in and kind of made a layout but never put it
8 on a rig.

9 Q. The drawing that is depicted in Exhibit Q, is
10 this a drawing that would have been developed
11 by the engineering department at Commercial
12 Carriers?

13 A. Yes.

14 Q. And this depicts the dimensions and the type
15 of cable and the fitting that was to be used
16 for the safety cables on the head rack?

17 A. Yes.

18 Q. Would there have been different drawings that
19 would depict different lengths of the cables
20 depending upon which particular model of
21 trailer you were building?

22 A. Yes.

23 Q. Would the information set forth in the boxes

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1 under the parts where, for example, the 1/4,
2 5/16th times 7 by 19 GAC yellow coated cable
3 is called out on the materials list, among
4 other things, would that information and this
5 drawing have been worked up by the engineering
6 department after you had received the
7 information back from Mr. Hanes as to the
8 specific type of cable that had the fitting
9 that he was recommending?

10 A. Yes.

11 Q. Now, when you were going about this process
12 selecting the cables to be used that you
13 described was Mr. Hanes advised that cost was
14 a factor?

15 A. No.

16 Q. Was cost a factor?

17 A. No, cost was not a factor.

18 Q. Had Mr. Hanes come to you and said I
19 recommend, for example, stainless steel, but
20 it's more expensive than the galvanized cable,
21 what would you have done at that point?

22 MR. PAULUS: Object to the form.

23 Q. Had you received that information?

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1 MR. KOUSTMER: Objection.

2 Q. Do you understand my question?

3 A. Yes. We would have followed the vendor's
4 specifications. We are not the experts by far
5 on these cables, nor are we the expert with
6 valves or cylinders. When our vendor comes in
7 and fits for application we follow his
8 guidelines.

9 Q. You mentioned that Mr. Hanes brought with him
10 some information that talked about the various
11 physical properties of some of the cables that
12 they sold. Do you recall that testimony?

13 A. Yes.

14 Q. Mr. Paulus recently produced various documents
15 in response to a document request, one of
16 which has -- appears to be catalog number
17 twelve from Hanes Supply, Inc. and do you see
18 that?

19 A. Yes.

20 Q. There is a document in that, within that group
21 of, composite group of pages that shows -- I
22 think it's page 39, galvanized aircraft cable
23 and there are various boxes on the page that

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1 show different sizes including 7 by 19 and
2 breaking strength in pounds, although not
3 necessarily the exact document that you were
4 shown, but is this page that I'm showing you
5 similar to what you recall Mr. Hanes bringing
6 with him and showing to you?

7 A. Yes.

8 Q. We'll mark this Bevilacqua H, just for
9 identification.

10

11 The following were marked for identification:

12 Exhibit Bevilacqua H Document

13

14 Q. I have placed that sticker on that particular
15 document.

16 A. Yes.

17 Q. As to the use of yellow coated cable, when you
18 requested from Hanes Supply that they provide
19 to you this cable with the yellow coating, did
20 Mr. Hanes or anyone from Hanes Supply voice
21 any concerns that they had about the use of a
22 colored cable?

23 A. No.

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1 Q. Concerns of any type?

2 A. No.

3 Q. Did Mr. Hanes make you aware of the fact that
4 different colors were available for the
5 coatings?

6 A. Yes.

7 Q. Was Mr. Hanes made aware of the fact that the
8 cables at one end were installed on the
9 trailer would not be pulled tight between the
10 posts but would rather have a -- be slightly
11 loose?

12 A. Yes. We needed to have that to be able to
13 accommodate for door openings on vehicles.

14 Q. All right.

15 A. That was one of the main fitting for the
16 application when we showed the application,
17 that you needed to open car doors.

18 Q. And did Mr. Hanes express any concern to you
19 about the fact that the cables would be
20 installed in that fashion?

21 A. No.

22 Q. Was it your expectation, Mr. Bevilacqua, that
23 the cable and the fittings and the use of the

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1 swaging technique, all of which Mr. Hanes had
2 recommended, was it your expectation that that
3 application was appropriate for the purpose to
4 which you intended it?

5 A. Yes.

6 MR. KOUSTMER: Objection to form.

7 MR. PAULUS: Objection to the form.

8 Q. Did you have an expectation, based upon
9 information you provided Mr. Hanes and the
10 information he came back to you, as to whether
11 or not the recommendation he made was
12 appropriate for the use which you intended for
13 these cables?

14 MR. KOUSTMER: Objection.

15 A. Yes.

16 Q. Did you rely upon their expertise in making
17 the selection that you did?

18 MR. KOUSTMER: Objection.

19 A. Yes.

20 Q. Did you have any expectations as to whether
21 the cable system proposed by Mr. Hanes would
22 comply with the requirement that you had that
23 the cable system be one that would last the

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1 life of the trailer?

2 MR. KOUSTMER: Objection.

3 MR. PAULUS: Object.

4 Q. You may answer.

5 A. Yes.

6 MR. LARSON: That's all the questions I
7 have.

8

9

10 REEXAMINATION BY MR. KOUSTMER:

11 Q. I have one or two questions here. Back to the
12 pricing that Mr. Larson asked you some leading
13 questions about. Was that your decision and
14 your position or would that be someone else in
15 the company concerning what these were going
16 to cost?

17 MR. LARSON: Object to the form of the
18 question. It was argumentative.

19 Q. Go ahead.

20 A. Yes, that would be my decision.

21 Q. So you were the one deciding if the cost was
22 okay what these cost or would that have to go
23 up through the company and be decided by Mr.

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1 Terzian or Mr. Fortuna?

2 A. I mean, Vince made the final decisions, but as
3 far as spec'ing a cable, if it was \$50 or
4 \$200, at that level I could make that
5 decision.

6 Q. So you could make that decision?

7 A. Yes.

8 Q. Were you provided any alternatives as to cost
9 or is this the only cost you were provided for
10 these cables?

11 A. We really never looked at the cables for cost,
12 truthfully. We never looked for them for
13 cost.

14 Q. And you never told Mr. Hanes anything about
15 cost?

16 A. No.

17 Q. One way or the other?

18 A. No.

19 Q. They had to be, so you didn't even discuss
20 cost with Mr. Hanes when he came over to talk
21 to you about cables?

22 A. Of course we discussed cost.

23 Q. What did you tell him?

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PAULUS - BEVIL CQUA - 3/26/03

1 A. I told him no problem. Send them over. Ship
2 them. I mean, he basically -- he's selling a
3 product, so definitely we did talk about cost
4 but it wasn't send me the cheaper ones because
5 -- it wasn't about price. It was about
6 safety.

7 Q. So you had no discussions with him about price
8 prior to him making this recommendation to you
9 and telling you at that time what the price
10 would be?

11 A. No.

12 Q. That's your testimony, is that correct?

13 A. Yes.

14 MR. KOUSTMER: That's all I have.

15

16

17 REEXAMINATION BY MR. PAULUS:

18 Q. I promise I only have one more question. When
19 you were meeting with Bill Hanes and talking
20 about cost or not talking about, did you ever
21 tell him that Hanes Supply is the only show in
22 town and we're not going to price shop this,
23 you know?

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1 A. We never talked about cost. I mean, never.
2 Not competitive cost. We talked about a cost,
3 here's what this would be. Okay, let's go
4 with it. We never compared price. It was
5 always Hanes Supply for all the cables.
6 MR. PAULUS: Okay. I think that's all I
7 have.

8 MR. KOUSTMER: That's all I have.
9 MR. LARSON: I have no further questions.
10 What we had talked about while you were off
11 the phone was that we'll submit these
12 depositions to the witnesses for review and
13 signature. If it's agreeable with everyone,
14 if they're not signed within 30 days of trial
15 they can be used as if signed.

16 MR. KOUSTMER: Well, yes.

17

18 (Whereupon, the deposition concluded)

19 * * *

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21

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1 CASE NAME: Ferguson v Ryder, et al.
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6 I wish to make the following changes, for the
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22 Subscribed and sworn to before me this
23 _____ day of _____ 2003
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1 STATE OF NEW YORK)

2

3) ss.

4

5 COUNTY OF ERIE)

6

7

8 I, Rebecca Lynne DiBello, Notary Public, in
9 and for the County of Erie, State of New York,
do hereby certify:

10 That the witness whose testimony appears
11 hereinbefore was, before the commencement of
12 their testimony, duly sworn to testify the
13 truth, the whole truth and nothing but the
14 truth; that said testimony was taken pursuant
15 to notice at the time and place as herein set
forth; that said testimony was taken down by
me and thereafter transcribed into
typewriting, and I hereby certify the
foregoing testimony is a full, true and
correct transcription of my shorthand notes so
taken.

16

17 I further certify that I am neither counsel
18 for nor related to any party to said action,
19 nor in anyway interested in the outcome
thereof.

20 IN WITNESS WHEREOF, I have hereunto
21 subscribed my name and affixed my seal this
22 _____ day of _____, 2003.

23

Rebecca Lynne DiBello

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